

ENDANGERED SPECIES ACT AMENDMENTS OF 1982

SEPTEMBER 17, 1982.—Ordered to be printed

Mr. JONES of North Carolina, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6133]

[Excerpt follows:]

Section 6(6) adopts provisions appearing in both the House bill and the Senate amendment. This section gives greater flexibility to the Secretary in the treatment of populations of endangered or threatened species that are introduced into areas outside their current range.

Section 6(6) adds a new subsection (j) to section 10 of the Act. Paragraph (1) of new section 10(j) defines the term "experimental population." To qualify for the special treatment afforded experimental populations, a population must have been authorized by the Secretary for release outside the current range of the species. Populations resulting from releases not authorized by the Secretary are not considered "experimental populations" entitled to the special provisions of this subsection.

To protect natural populations and to avoid potentially complicated problems of law enforcement, the definition is limited to those introduced populations that are wholly separate geographically from nonexperimental populations of the same species. If an introduced population overlaps with natural populations of the same species during a portion of the year, but is wholly separate at other times, the introduced population is to be treated as an experimental population at such times as it is wholly separate. Such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable and not when total separation occurs as a result of random and unpredictable events.

Under paragraph (2) of new section 10(j) the Secretary may authorize the release of populations of endangered or threatened species outside their current range if he determines by regulation that doing so will further the conservation of the species. Before authorizing the release of an experimental population, the Secretary must also determine by regulation whether the population is essential to the continued existence of an endangered or threatened species. In

making the determination, the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild. If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute "essentiality" is expected to vary among listed species and, in most cases, experimental populations will not be essential.

The purpose of requiring the Secretary to proceed by regulation, apart from ensuring that he will receive the benefit of public comment on such determinations, is to provide a vehicle for the development of special regulations for each experimental population that will address the particular needs of that population. Among the regulations that must be promulgated are regulations to provide for the identification of experimental populations. Such regulations may identify a population on the basis of location, migration pattern, or any other criteria that would provide notice as to which populations of endangered or threatened species are experimental.

The Secretary, acting through the Fish and Wildlife Service of the National Marine Fisheries Service, as appropriate, may avoid the need for step-by-step review and promulgation of specific regulations concerning Federal actions by entering into written agreements or memoranda of understanding with other Federal land managing agencies to develop long-term programs for the conservation of experimental populations.

Paragraph (3) of new section 10(j) clarifies that any population now in existence which may meet the definition of an experimental population shall be treated as such only when determined by regulation. Thus, until such time as the Secretary makes an affirmative determination that a particular population is an experimental population, it shall remain subject to the same protections as any other population of the same species.

All experimental populations, once determined to be such, are to be treated as though they have already been separately listed as threatened species. This provision obliges the Secretary to issue such regulations as he deems necessary and advisable to provide for the conservation of the experimental populations, just as he now does under section 4(d) of the Act for any threatened species.

The Conference substitute restricts the application of section 7 of the Act as it pertains to experimental populations. As noted above, whenever the Secretary determines that a particular population, whether it is already established or proposed to be established, is an experimental population, he is also to determine, as part of the same rulemaking, whether the population is essential to the continued existence of the species. If he determines that it is, then the experimental population remains subject to the full protection of section 7 of the Act. If he determines that it is not, then solely for the purposes of section 7 of the Act the population is subject only to those protections of section 7(a)(1) of the Act and those of section 7 of the Act that apply to species proposed to be listed as an endangered or threatened species. Critical habitat may not be designated for such nonessential populations. However, any experimental population that is found on any unit of the National Wildlife Refuge

System or the National Park System remains subject to the full protection of Section 7 of the Act.

Section 7. Enforcement

Section 7 of the Conference substitute adopts provisions of the Senate amendment amending Section 11 of the Act. Section 7 explicitly provides to the Attorney General the authority to seek injunctive relief. Section 7 also amends the citizen suit provision of the Act to authorize actions against the Secretary for failure to perform the acts and duties that are imposed by section 4, as amended.

Section 8. Authorization

Section 8 of the Conference substitute adopts provisions appearing in both the House bill and the Senate amendment. Section 8 adopts the authorization levels and duration recommended by both the House and the Senate. A separate authorization for implementation of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere is also adopted. The authorization provisions appearing in sections 6, 7 and 15 of the Act are consolidated and will now appear in Section 15, as amended.

Section 9. Miscellaneous

Section 9 of the Conference substitute adopts provisions of the Senate amendment. Section 9 adds a new paragraph to subsection 2(c) of the Act, the statement of Congressional policy; amends section 9 of the Act by adding a provision to prohibit the removal and reduction to possession of any endangered plant that is on Federal land; resolves a conflict between two Federal circuit court opinions regarding the applicability of the prohibitions of section 9 of the Act to pre-Act wildlife held in the course of a commercial activity after December 28, 1973; and clarifies the scope of the section 9(b)(2) exception to the prohibition contained in section 9 of the Act.

WALTER B. JONES,
JOHN BREAUX,
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DAVID R. BOWEN,
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EDWIN B. FORSYTHE,
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Solely for consideration of section 4 of the House bill and modification committed to conference:

DON BONKER,
JIM LEACH,
Managers on the Part of the House.

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
SLADE GORTON,
JENNINGS RANDOLPH,
GEORGE J. MITCHELL,
Managers on the Part of the Senate.

THE ENDANGERED SPECIES ACT
AS AMENDED BY PUBLIC LAW 97-304
(THE ENDANGERED SPECIES ACT
AMENDMENTS OF 1982)

[Excerpt follows]

(j) *EXPERIMENTAL POPULATIONS.*—(1) *For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.*

(2)(A) *The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.*

(B) *Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.*

(C) *For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—*

(i) *solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and*

(ii) *critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.*

(3) *The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before*

the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.